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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

EUGENE GENCHEV,

Plaintiff,

vs.

DETROIT DIESEL CORPORATION; and Does 10, inclusive,

Defendant.

Case No. 08-CV-1021 W (NLS)

EVIDENTIARY OBJECTIONS TO, AND MOTION TO STRIKE, PORTIONS OF THE DECLARATION OF EUGENE GENCHEV AND ATTACHED EXHIBITS

[FILED CONCURRENTLY WITH REPLY MEMORANDUM]

Date: August 4, 2008

[NO ORAL ARGUMENT PURSUANT TO LOCAL RULE 7.1(d)(1)]

(Complaint filed: 4/18/08)

Defendant Detroit Diesel Corporation submits the following evidentiary objections to the declaration of Eugene Genchev, filed in Opposition to Detroit Diesel's motions to dismiss and alternative motion for summary judgment:

1. Eugene Genchev does not have personal knowledge of the facts set forth in his declaration and/or the attached exhibits simply because he is the plaintiff, as conclusorily alleged in paragraph 1.

2. In paragraph 2, Genchev states he purchased the two tractors "from an authorized Detroit Diesel distributor" and that "Detroit Diesel expressly warranted the engines of the Vehicles." These statements are mere conclusions which lack personal knowledge. Pursuant to Fed.R.Civ.P. 56(e)(1), all declarations opposing a summary judgment motion must be based on personal knowledge. Genchev has no personal knowledge of the relationship, if any, between Albuquerque Freightliner and Murray's Freightliner, where he purchased the tractors, and Detroit Diesel. The purchase orders did not include any express warranty by Detroit Diesel for the engines and Genchev did not purchase the engines from Detroit Diesel. These statements also lack foundation and are conclusory.

3. In paragraph 5, Genchev again concludes the alleged "engine nonconformities" are "covered by the Detroit Diesel warranties." He has not set out the express terms of any Detroit Diesel warranty, in violation of the best evidence rule. Fed.R. Evid. 1001, et seq.

4. In paragraph 7 and with regard to Exhibit B, Genchev lacks personal knowledge, cannot properly authenticate the document and is proffering inadmissible hearsay. "[H]earsay evidence in Rule 56 affidavits is entitled to no weight." Scosche Indus., Inc. v. Visor Gear Inc., 121 F.3d 675, 681 (9th Cir. 1997).

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5. Exhibit B is not the Detroit Diesel warranty for the engines. It consists of a letter and one attached page sent to Genchev by Albuquerque Freightliner. The entire Exhibit B is illegible and unreadable.

6. Paragraphs 8 and 9 lack personal knowledge and are merely conclusory. Exhibit C to Genchev's declaration is a letter from Valley Power Systems, which Genchev interprets to be an admission of engine nonconformities by Detroit Diesel. Genchev also concludes, without any personal knowledge, that Valley Power Systems is an "authorized Detroit Diesel warranty repair facility." Such statements lack personal knowledge and are based on inadmissible hearsay. Further, Exhibit C itself is a letter from Valley Power Systems, not from Detroit Diesel, listing 17 "problems."

Dated: July 28, 2008

GRACE, COSGROVE & SCHIRM
A Professional Corporation

By: /s/Lisa Kralik Hansen
Philip R. Cosgrove
Lisa Kralik Hansen

Attorneys for Defendant
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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 444 South Flower Street, Suite 1100, Los Angeles, California 90071.

On July 28, 2008, I served the within document(s) described as:

EVIDENTIARY OBJECTIONS TO, AND MOTION TO STRIKE, PORTIONS OF THE DECLARATION OF EUGENE GENCHEV AND ATTACHED EXHIBITS

on the interested parties in this action as stated on the attached mailing list.

[X] (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth on the attached mailing list. I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[ ] (BY FAX) By transmitting a true copy of the foregoing document(s) via facsimile transmission from this Firm's sending facsimile machine, whose telephone number is (213) 533-5444, to each interested party at the facsimile machine telephone number(s) set forth on the attached mailing list. Said transmission(s) were completed on the aforesaid date at the time stated on the transmission record issued by this Firm's sending facsimile machine. Each such transmission was reported as complete and without error and a transmission report was properly issued by this Firm's sending facsimile machine for each interested party served. A true copy of each transmission report is attached to the office copy of this proof of service and will be provided upon request.

I certify that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on July 28, 2008, at Los Angeles, California.

I declare under penalty of perjury that the foregoing is true and correct.

Liv Kirchoff	Liv Kirchoff
(Type or print name)	(Signature)

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